

HOUSE No. 1476

The Commonwealth of Massachusetts

PRESENTED BY:

John D. Keenan (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to the Recusal of Judges.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Stefano Picciotto	418 Lafayette Street Salem, MA 01970
Melita Picciotto	418 Lafayette Street Salem, MA 01970

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE RECUSAL OF JUDGES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 211b, § 11, is amended by adding the following new paragraphs:

Whenever a party to any proceeding makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him/her or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

2. (a) Any justice, judge, or magistrate judge of the Commonwealth of Massachusetts shall disqualify himself/herself in any proceeding in which his/her impartiality might reasonably be questioned.

(b) He/she shall also disqualify himself/herself in the following circumstances:

(1) Where he/she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he/she served as lawyer in the matter in controversy, or a lawyer with whom he/she previously practiced law

- served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
- (3) Where he/she has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
- (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his/her household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- (5) He/she or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
- (i) Is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) Is acting as a lawyer in the proceeding;
 - (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
 - (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.
- (c) A judge shall inform himself/herself about his/her personal and fiduciary financial interests, and make a reasonable effort to inform himself/herself about the personal financial interests of his/her spouse and minor children residing in his/her household.
- (d) For the purposes of this section the following words or phrases shall have the meaning indicated:
- (1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
 - (2) the degree of relationship is calculated according to the civil law system;
 - (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
 - (4) "financial interest" means ownership of a legal or equitable

55 interest, however small, or a relationship as director, adviser, or
56 other active participant in the affairs of a party, except that:

57 (i) Ownership in a mutual or common investment fund that holds
58 securities is not a “financial interest” in such securities unless the
59 judge participates in the management of the fund;

60 (ii) An office in an educational, religious, charitable, fraternal, or
61 civic organization is not a “financial interest” in securities held by
62 the organization;

63 (iii) The proprietary interest of a policyholder in a mutual
64 insurance company, of a depositor in a mutual savings association,
65 or a similar proprietary interest, is a “financial interest” in the
66 organization only if the outcome of the proceeding could
67 substantially affect the value of the interest;

68 (iv) Ownership of government securities is a “financial interest” in
69 the issuer only if the outcome of the proceeding could substantially
70 affect the value of the securities.

71 (e) No justice, judge, or magistrate judge shall accept from the parties to the
72 proceeding a waiver of any ground for disqualification enumerated in
73 subsection (b). Where the ground for disqualification arises only under
74 subsection (a), waiver may be accepted provided it is preceded by a full
75 disclosure on the record of the basis for disqualification.